

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 6468 of 1999

with

CIVIL APPLICATION No 12091 of 1999

Date of Decision: 28-12-2004

GSRTC

Versus

BHARATKUMAR MANILAL GANDHI

(for full cause title, see next sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

For the Appellant Mr.Hardik Rawal, Adv.

For the Respondent-claimant Mr.Baiju Joshi, Adv.

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

#. Admit. Shri Baiju Joshi, learned counsel for the respondent-claimant, waives service.

#. This Appeal is directed against the Award of the Motor Accident Claims Tribunal (Aux.) District Bharuch at

Whether reporters of Local Papers may be allowed to see the Judgment?

#. Accident took place on January 1, 1992, between motorcycle bearing Registration No.GJ-5-6996 and ST Bus bearing Registration No.GRT-7283. The claimant was going on his motorcycle with pillion rider, besides other friends on different motorcycles, for a picnic. The bus hit the claimant resulting in fracture on right leg causing permanent disability to the extent of 23%. He had to be hospitalized for long treatment incurring huge expenditures. Allegation is that the accident took place due to the rash and negligent driving of ST bus by its driver, otherwise it could have been avoided. The deceased was 27 year old, a shop keeper, earning Rs.1500/= per month at the relevant point of time.

Ultimately, compensation of Rs.1,62,060/= carrying interest at the rate of 12% per annum from the date of application till realization was awarded. Against this award, present Appeal has been filed.

#. Two questions are seriously canvassed by Shri Hardik Rawal, learned counsel for the appellant, namely, the accident was not caused by ST driver, at the most, he could have contributed along with the claimant, division of liability should be 60:40. Further, assessment of compensation is on the higher side.

#. Both the questions have been examined. Finding of fact recorded by the Claims Tribunal is that the claimant had crossed when the motorcycle was hit by the bus driver who turned to the right all of a sudden. This being finding of fact, cannot be set aside by the appellate court unless same is found perverse and without evidence. This is not so in this case since evidence clearly discloses that but for the bus being turned to the right all of a sudden, accident could have been avoided. Finding of fact on this issue by the Claims Tribunal is based on evidence, therefore, confirmed.

With regard to assessment of compensation, we think, same is just and proper in the context of income of deceased, his age, and expenditure or treatment, etc.

Consequently, we find no merit in this Appeal and the same is dismissed. Cost on parties.

Civil Application for stay shall stand disposed
of.

(BHAWANI SINGH)
CHIEF JUSTICE

(H.K.RATHOD)
JUDGE

(sunil)